IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1392 of 2002
With
CIVIL APPLICATION No. 5958 of 2002
In
FIRST APPEAL No. 1392 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULAMSARIF MUKHI & 3 - Appellant(s)
Versus
DODIYA AHMEDBHAI HABIB-BHAI - Defendant(s)

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Appearance :

MR SUNIT S SHAH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
NOTICE NOT RECD BACK for Defendant(s) : 1,
MR NK MAJMUDAR for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/04/2007

ORAL JUDGMENT

With the consent of parties and in the facts and circumstances of the case, main appeal itself is taken up for final hearing today. Heard Shri Vipul

Mistry, learned AGP for Shri Sunit Shah, learned Government Pleader appearing for the trustees of trust Balapir-ni-Jagya and Shri NK Majmudar, learned advocate with Shri Suthar, learned advocate appearing on behalf of the opponents herein.

2. Few facts are necessary for the purpose of determination of the present appeal.

The appellants are the trustees of Balapir-Ni-Jagya, a pubic charitable trust registered with the Assistant Charity Commissioner at Mehsana under the provisions of the Bombay Public Trust Act, 1950 (for short “the Act”) having registration No. B/151 dated 21-2-1953. It appears that on the death of both the trustees of the said trust, a change report was submitted before the learned Assistant Charity Commissioner as change report No.123 of 1994 dated 6-3-1994 and the said change report came to be approved by the learned Assistant Charity Commissioner by its order dated 24-3-1994. Being aggrieved by the order passed by the learned Assistant Charity Commissioner dated 24-3-1994 in allowing the change report No.123 of 1994, the opponents herein preferred appeal before the learned Charity Commissioner at Ahmedabad being appeal No.31 of 1994. However, there was delay of five months in preferring the said appeal and therefore, the application for condonation of delay was preferred by the opponents herein. The learned Charity Commissioner by order dated 2-6-1998 rejected the application of the opponents for condonation of delay

and dismissed the appeal. Being aggrieved by the order passed by the learned Charity Commissioner dated 2-6-1998 in not condoning the delay, the opponents preferred Civil Misc. Application No.123 of 1998 before the learned trial Court i.e. learned Assistant Judge, Mehsana camp at Patan. The learned Assistant Judge by its impugned judgment and order dated 31-1-2002 not only quashed and set aside the order passed by the learned Charity Commissioner dated 2-6-1998 but also quashed and set aside the order passed by the learned Assistant Charity Commissioner dated 24-3-1994 passed in change report No.123 of 1994 and remanded the matter to the learned Assistant Charity Commissioner for deciding the same afresh. Being aggrieved by the impugned judgment and order passed by the learned Assistant Judge, Mehsana camp at Patan dated 31-1-2002 passed in Civil Misc. Application No.123 of 1998, the appellant herein,-original opponents have preferred the present appeal.

3. Shri Mistry, learned AGP has submitted that if the learned trial Court was of the opinion that the order passed by the learned Charity Commissioner, Ahmedabad in not condoning the delay is erroneous and is required to be quashed and set aside, in that case, the learned trial Court ought to have allowed the said appeal by quashing and setting aside the order passed by the learned Charity Commissioner and ought to have remanded the matter to the learned Charity Commissioner for deciding the said appeal on merits instead of quashing and setting aside the

order passed by the learned Assistant Charity Commissioner. He has submitted that when the appeal was preferred by the opponents challenging the order passed by the learned Charity Commissioner in not condoning the delay, the learned trial Court has no jurisdiction and/or authority to decide and dispose of the appeal which was to be decided by the Charity Commissioner on merits and was not required to consider the order passed by the learned Assistant Charity Commissioner on merits. Therefore, it is requested to allow the present appeal and to remand the matter to the learned Charity Commissioner for deciding the appeal preferred by the opponents herein on merits. Shri Suthar, learned advocate appearing on behalf of the opponents herein is not in a position to satisfy the Court that in an appeal preferred by the opponents challenging the order passed by the learned Charity Commissioner in not condoning the delay, the learned trial Court could have decided the appeal on merits and to consider the order passed by the learned Assistant Charity Commissioner.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. It is required to be noted that the learned Charity Commissioner passed an order dated 2-6-1998 rejecting the application of the opponents for condonation of delay in preferring the appeal challenging the order passed by the learned Assistant Charity Commissioner dated 24-3-1994 passed in change

report No.123 of 1994 dated 6-3-1994. Being aggrieved by the order passed by the learned Charity Commissioner in not condoning the delay, the opponents herein preferred Civil Misc. Application No.123 of 1998 before the learned Assistant Judge, Mehsana camp at Patan. Under the circumstances, the learned trial Court ought to have confined the appeal only qua the order passed by the learned Charity Commissioner in not condoning the delay. If the learned trial Court was of the opinion that the learned Charity Commissioner has committed an error in not condoning the delay, then he should have passed an order of condonation of delay by quashing and setting aside the order passed by the learned Charity Commissioner dated 2-6-1998 in not condoning the delay and he ought not to have further passed an order to quash and set aside the original order passed by the learned Assistant Charity Commissioner dated 6-3-1994 passed in change report No.123 of 1994. The order passed by the learned Assistant Charity Commissioner is required to be considered and dealt with by the learned Charity Commissioner in an appeal preferred by the opponents. Under the circumstances, the learned trial Court has committed an error in quashing and setting aside the order passed by the learned Assistant Charity Commissioner dated 24-3-1994 passed in change report No.123 of 1994 and rest of the order in condoning the delay is required to be confirmed.

6. For the reasons stated above, the present first

appeal is partly allowed. The order passed by the learned trial Court in quashing and setting aside the order passed by the learned Charity Commissioner, Ahmedabad below Exh-2 in Appeal No.31 of 1994 is hereby confirmed. However, the order passed by the learned trial Court in quashing and setting aside the order of the learned Assistant Charity Commissioner passed in change report No.123 of 1994 is hereby quashed and set aside and the matter is remanded to the learned Charity Commissioner for deciding appeal No.31 of 1994 in accordance with law and on merits. The aforesaid exercise be completed by the learned Charity Commissioner within a period of six months from the date of receipt of this order. It is also further observed that it will be open for the opponents herein to move an appropriate application for interim relief before the learned Charity Commissioner in the aforesaid appeal and as and when such an application is made, the same shall be decided in accordance with law and on merits. No costs.

7. In view of dismissal of main first appeal, no order is civil application.

(M.R. Shah, J.)

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